

REMARKS

Claims 1-5 and 7-30 are pending in this application.

REJECTIONS UNDER 35 U.S.C. § 103(a)

Reconsideration is respectfully requested of the rejection of: (1) claims 1-3, 7, 8, 11-17, 19-26 and 30 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,304,173 ("Pala") in view of U.S. Patent Application Pub. No. 2002/0197955 ("Witkowski"); (2) claims 27-29 under 35 U.S.C. § 103(a) as being unpatentable over Pala in view of Witkowski and further in view of U.S. Patent No. 6,526,335 ("Treyz"); (3) claims 4, 9, 10 and 18 under 35 U.S.C. § 103(a) as being unpatentable over Pala in view of Witkowski and further in view of U.S. Patent No. 6,577,928 ("Obravich"); and (4) claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Pala in view of Witkowski and further in view of U.S. Patent No. 6,256,317 ("Holloway").

**U.S. Patent Application Pub. No. 2002/0197955 ("Witkowski")
Is Not Eligible As A Prior Art Reference For The Instant Application**

Applicant respectfully submits that Witkowski is not eligible as a prior art reference because it does not antedate the filing date of the instant application (October 27, 2000) under any of the provisions of 35 U.S.C. § 102. Witkowski was filed in the U.S. Patent and Trademark Office on April 23, 2002 as a continuation of U.S. Patent Application Serial No. 09/979,199 ("199 application"), filed on April 29, 2002. The '199 application was filed under 35 U.S.C. § 371 (National Stage), based on International Application No. PCT/US00/14692 ("IA '692"), which was filed on May 26, 2000 and designated the United States. IA '692 claimed priority to U.S. Provisional Application No. 60/135,979, ("Provisional App."), filed on May 26, 1999.

Based on the above family history, Applicant respectfully submits that the earliest

date that Witkowski may be entitled to under section 102 is April 29, 2002, since Witkowski is a continuation of the '199 application (assuming full support in the '199 application under 35 U.S.C. § 112). Similarly, April 29, 2002 is also the earliest date that an issued patent based on the '199 application may be entitled to under section 102.¹

A U.S. patent resulting from the '199 application is not entitled to a 102 date earlier than April 29, 2002 because IA '692 was filed prior to November 29, 2000.

M.P.E.P. § 706.02(a) states:

International applications, which: (1) were filed prior to November 29, 2000, or (2) did not designate the U.S., or (3) were not published in English under PCT Article 21(2) by WIPO, may not be used to reach back (bridge) to an earlier filing date through a priority or benefit claim for prior art purposes under 35 U.S.C. 102(e).

Publications of international applications filed before November 29, 2000 (which would include WIPO publications and U.S. publications of the national stage (35 U.S.C. 371)) do not have a 35 U.S.C. 102(e) date at all.

Therefore, Applicant submits that the international filing date of May 26, 2000, and the Provisional App. filing date of May 26, 1999, are not applicable to Witkowski under section 102.

As stated in M.P.E.P. § 706.02(f), Example 9, "[n]o benefit of [an] international filing date (nor any U.S. filing dates prior to the [international application]) is given for 35 U.S.C. 102 (e) prior art purposes [when] the [international application is] filed prior to November 29, 2000." See also Flow Chart I, M.P.E.P. § 706.02(f)(1).

¹ Because IA '692 was filed prior to November 29, 2000, a publication of the '199 application would not have a 102(e) date at all, and would be judged as prior art as of its publication date. See M.P.E.P. § 706.02(a).

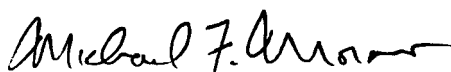
Further, if a second, later-filed U.S. nonprovisional application (e.g., Witkowski) claims the benefit of an application relying on an international application filed prior to November 29, 2000 (e.g., the '199 application), the 35 U.S.C. 102 (e) date of the patent or publication of the second, later-filed U.S. application (e.g., Witkowski) would still be the actual filing date of the application relying on an international application (e.g., the '199 application (4/29/02)). See M.P.E.P. § 706.02(f), Example 9.

As a result, Applicant respectfully submits that Witkowski cannot be used to support a rejection under 35 U.S.C. § 103(a). Accordingly, because all the claim rejections in the June 22, 2005 Office Action rely on Witkowski, Applicants submit that the rejections are improper and that claims 1-5 and 7-30 are patentable over the cited references.

Therefore, Applicant respectfully submits that the Examiner withdraw the rejections of claims 1-5 and 7-30 under 35 U.S.C. § 103(a).

An early and favorable reconsideration is earnestly solicited. If the Examiner has any further questions or comments, the Examiner may telephone Applicant's Attorney to reach a prompt disposition of this application.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael F. Morano", written over a horizontal line.

Michael F. Morano
Reg. No. 44,952
Attorney for Applicant

F. CHAU & ASSOCIATES, LLC
130 Woodbury Road
Woodbury, NY 11797
(516) 692-8888